

Levri Ardiansyah

General Principles of Intellectual Property Law: Copyright and Patent in the United States, Indonesia and India

**Week 2 Assignment on IPR Conceptual
(Internal-1 for GPIPL)**



The WIPO-NLUD Joint Masters/LL.M in Intellectual Property Law and Management, offered by the World Intellectual Property Organization (WIPO), National Law University Delhi (NLUD) and Controller General of Patents, Designs and Trademarks of India (CGPDTM).

August 26 to 31, 2024

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About the Author

Levri ARDIANSYAH

Levri Ardiansyah received a Bachelor of Science degree in Political Science from the University of Padjadjaran where he studied public administration (1992-1997). He awarded a Certificate of Completion for the First Edition of the WIPO-Harvard Law School, PatentX Course on Patent Law and Global Public Health (May 24, 2023), the World Intellectual Property Organization and the Harvard Law School (HLS) at Harvard University. He was also awarded several certificates in intellectual property field issued by the WIPO Academy, including 'Advanced Course on Patent Information Search' (August, 2022); 'Promoting Access to Medical Technologies and Innovation – A WHO, WIPO, WTO Executive Course on the Intersections between Public Health, Intellectual Property and Trade' (November, 2022); 'General Course on Intellectual Property' (November, 2023); 'Specialized Course on the Madrid System for the International Registration of Marks' (December 2023) and completed the 'Advanced Course on Trademarks, Industrial Designs and Geographical Indications' (Apr 5 to July 7, 2024).



Levri worked as a lecturer at Universitas Padjadjaran (1999-2018) and taught several courses including 'Introduction to Science of Administration', 'Introduction to Public Administration' and 'Public Policy'. His interest lies at the intersection between public policy, intellectual property and trade. From 2018 to 2022, he worked as a researcher at Universitas Padjadjaran, starting at Faculty of Geological Engineering (2018-2019), Sustainable Development Goals Center (SDGs Center, 2019-2020) and Directorate for Innovation and Corporation (2020-2022). Since November 2023, he worked for the Cimahi Municipal Government as a consultant-SDGs expert.

Levri is a writer and bilingual poet (Indonesian and English). He is the author of the 2014 book *Cooperative Human Actions: Menelusuri Jejak Interrelasi Manusia Primitif*; the 2016 book *Induction of Science of Administration*; the 2017 book *Earth and the Laws of Association*; the 2017 book *The Origins of Administration: The Foundation Stone of a New Science*; the 2018 book *Sketsa Sosiologis Unpad Kampus Jatinangor*; the 2018 book *Ouroboros, Filosofi dan Ilmu*; and the 2021 book *Philosophy and Covid-19 in Poetry*. He is also a song writer of the 2021 hymn videograph *Hymne Diri Padjadjaran* and the 2021 march & song videograph *Hatshepsut's Blood* he posted on YouTube. Levri is the creator of a new poetry form he coined as 'HER Poetry'.

In August 2024, Levri was awarded a scholarship and selected as a WIPO Sponsored Student to the Joint Master's/LL.M in Intellectual Property Law and Management, offered by the World Intellectual Property Organization (WIPO), National Law University and Controller General of Patents, Designs and Trademarks of India (CGPDTM). He is now embarking on a study journey to pursue a Master of Arts program in Intellectual Property Law and Management at National Law University Delhi.

Bandung, West Java, Indonesia. August 23, 2024.

Levri Ardiansyah

Criteria of Copyrighted Work in the United States, Indonesia and India

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August 26 to 31, 2024

Topic 1

Criteria of Copyrighted Work in the United States, Indonesia and India

1.1. Criteria of Protected Works

It is generally accepted that copyright is concerned with protecting the work of human intellect. The domain of copyright is the protection of literary and artistic works. According to the Berne Convention (1886), article 2, (1) "The expression "literary and artistic works" shall include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science." (WIPO, (n.d.), TRT/BERNE/001).

What are the criteria for 'Works' in copyright?

There are three major criteria.

Firstly, the work must be the expression of thoughts, and not ideas.

Secondly, the work should, however, be original.

Thirdly, the work must be presented in a tangible medium of expression.

1.1.1. The Form of Its Expression

This originality relates to expression of thought and not to the underlying idea or thought. Article 2 of the 1971 Paris Act of the Berne Convention contains an illustrative, non-exhaustive list of protected works, which include "any original production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression."

1.1.2. Original Creation

"The ideas in the work do not need to be original, but the form of expression must be an original creation by the author." (WIPO, 2016: 8).

A work is original when it is independently created and not copied.

1.1.3. Fixed in Some Material Form

The form of expression (the work) must be fixed in some material form or presented in a tangible medium of expression. Fixation may mean, for example, that the work is written on paper, stored on a disk, painted on canvas, notated or recorded on videotape. Article 2(2) of the 1971 Paris Act of the Berne Convention allows States to require that works must be fixed in some material form in order to be protected. "For example, in a country with such a fixation requirement, a work of choreography could only be protected once the movements were written down in dance notation or recorded on videotape." (WIPO, 2005: 6).

1.1.4. Some other interesting criteria to discuss are as follows:

- (a) The work must be disclosed
- (b) The work must be published
The publication includes the actual distribution of copies of a work to the public by sale or other transfer of ownership, or by rental, lease or lending for purposes of further distribution, public performance or public display.
- (c) The work must have economic value
“There are two major copyright law traditions: the Anglo-American copyright (common law) system and the continental European authors’ rights (civil law) system. Generally speaking, whereas the former stresses the economic aspects of copyright, the latter is based on the intimate connection between the work and its author.” (Cabrera et al., 2017).
- (d) The work makes a substantial contribution to economic growth, employment, innovation and social cohesion;
- (e) The work is not a fact;
- (f) The works are not names, titles, slogans and other short phrases;
- (g) The works are not official texts of a legislative, administrative and legal nature (Article 2(4)), works of applied art (Article 2(7)), lectures, addresses and other oral works (Article 2bis(2));
- (h) The work is not in public domain.

1.2. Criteria of Eligibility for Protection

1. Nationality of author; place of publication of work;
2. Residence of author;
3. “Published” works;
4. “Simultaneously published” works

Article 3 of the Berne Convention (1886) concerns on these criteria as follows:

- (1) The protection of this Convention shall apply to:
 - (a) authors who are nationals of one of the countries of the Union, for their works, whether published or not;
 - (b) authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union.
- (2) Authors who are not nationals of one of the countries of the Union but who have their habitual residence in one of them shall, for the purposes of this Convention, be assimilated to nationals of that country.
- (3) The expression “published works” means works published with the consent of their authors, whatever may be the means of manufacture of the copies, provided that the availability of such copies has been such as to satisfy the reasonable requirements of the public, having regard to the nature of the work. The performance of a dramatic, dramatico-musical, cinematographic or musical work, the public recitation of a literary work, the communication by wire or the broadcasting of literary or artistic works, the exhibition of a work of art and the construction of a work of architecture shall not constitute publication.
- (4) A work shall be considered as having been published simultaneously in several countries if it has been published in two or more countries within thirty days of its first publication.

1. See Article 4 of the Berne Convention (1886).

1.5. Possible Limitation of Protection of Certain Works:

1.5.1. Criteria of Copyright Limitations and Exceptions for Educational Activities in Indonesia

Copyright protection for certain categories of works may be limited by exceptions. The following are some examples of the criteria of copyright limitations and exceptions for educational activities in Indonesia resulting from legislation reviewed on Law of the Republic of Indonesia Number 28 of 2014 regarding Copyright.

Copyright Limitations and Exceptions for Educational Activities in Indonesia		Legislation Reviewed Law of the Republic of Indonesia Number 28 of 2014 on Copyright	LEV
Private/Personal Use			
Provision	Art. 46		
Scope of private/personal use	Copying		
Type(s) of source work(s)	A published work		
Entity exercising private/personal use			
Purpose of private/personal use	For personal purposes		
Condition of private/personal use			
Frequency/copies and limits	In a single copy		
Preclusions (not part of private/personal use)	Works of architecture, whole or substantial part of book or musical notation, whole or substantial part of a database in digital form, computer program; Any reproduction for personal interests which would "Conflict with the legitimate interests of the author or copyright owner"		
Subject to Attribution			
Subject to Remuneration	Not required ("Without the permission of the author or the copyright holder")		

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 457. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Copyright Limitations and Exceptions for Educational Activities in Indonesia		Legislation Reviewed Law of the Republic of Indonesia Number 28 of 2014 on Copyright	LEV
Quotations			
Provision	Art. 44(1).a		
Scope of quotation	Use, retrieval, reproduction, modification		
Type(s) of source work(s)	All or substantial portion of works and/or related rights products (performances, phonograms, broadcasts)		
Entity exercising quotation			
Purpose of quotation	Criticizing or reviewing an issue		
Condition of quotation			
Preclusions (not part of quotation)	It does not prejudice the legitimate interest of the author or copyright holder		
Subject to Attribution	Source (mentioned or included in full)		
Subject to Remuneration	Not required ("Not considered a violation of copyright")		

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 457. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Research/Educational Reproduction

Provision	Art. 44(1).a
Scope of research/educational reproduction	Use, retrieval, reproduction, modification
Type(s) of source work(s)	All or substantial portion of works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising reproduction	
Purpose of educational reproduction	Education, research, scientific writing
Condition of reproduction	
Frequency/copies and limits	
Preclusions (not part of research/educational reproduction)	It does not prejudice the legitimate interest of the author or copyright holder
Subject to Attribution	Source (mentioned or included in full)
Subject to Remuneration	Not required ("Not considered a violation of copyright")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 457 & 458. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Research/Educational Reproduction

Provision	Art. 44(1).c
Scope of research/educational reproduction	Use, retrieval, reproduction, modification
Type(s) of source work(s)	All or substantial portion of works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising reproduction	
Purpose of educational reproduction	Lectures for purposes of education and science
Condition of reproduction	
Frequency/copies and limits	
Preclusions (not part of research/educational reproduction)	It does not prejudice the legitimate interest of the author or copyright holder
Subject to Attribution	Source (mentioned or included in full)
Subject to Remuneration	Not required ("Not considered a violation of copyright")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 458. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Research/Educational Reproduction

Provision	Art. 26.b
Scope of research/educational reproduction	Reproduction
Type(s) of source work(s)	Works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising reproduction	
Purpose of educational reproduction	Scientific research
Condition of reproduction	
Frequency/copies and limits	
Preclusions (not part of research/educational reproduction)	
Subject to Attribution	
Subject to Remuneration	Not required ("[neighbouring] rights ... does not apply")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 458. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/scr_33/scr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Research/Educational Reproduction

Provision	Art. 26.c
Scope of research/educational reproduction	Reproduction
Type(s) of source work(s)	Works and/or related rights products (performances, phonograms, broadcasts), except for performances and phonograms published as teaching materials
Entity exercising reproduction	
Purpose of educational reproduction	Teaching purposes
Condition of reproduction	
Frequency/copies and limits	
Preclusions (not part of research/educational reproduction)	
Subject to Attribution	
Subject to Remuneration	Not required ("[neighbouring] rights ... does not apply")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 458 & 459. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/scr_33/scr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Research/Educational Reproduction

Provision	Art. 26.d
Scope of research/educational reproduction	Use
Type(s) of source work(s)	Works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising reproduction	
Purpose of educational reproduction	Education and development of science
Condition of reproduction	
Frequency/copies and limits	
Preclusions (not part of research/educational reproduction)	
Subject to Attribution	
Subject to Remuneration	Not required ("[neighbouring] rights ... does not apply")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 459. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

School Performances

Provision	Art. 44(1).d
Scope of school performance	Use, retrieval, reproduction, modification
Type(s) of source work(s)	all or substantial portion of works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising school performance	
Purpose of school performance	Performances or performances that are free [sic]
Condition of school performance	
Frequency/copies and limits	
Preclusions (not part of school performance)	It does not prejudice the legitimate interest of the author
Subject to Attribution	Source (mentioned or included in full)
Subject to Remuneration	not required ("ot considered a violation of copyright")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 459. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

School Performances

Provision	Art. 26.d
Scope of school performance	Use
Type(s) of source work(s)	Works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising school performance	
Purpose of school performance	Education and development of science
Condition of school performance	
Frequency/copies and limits	
Preclusions (not part of school performance)	
Subject to Attribution	
Subject to Remuneration	Not required ("[neighbouring] rights ... does not apply")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 459 & 460. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Educational Broadcasts/ Communications/Recordings

Provision	Art. 26.d
Scope of broadcast/communication/recording	Use
Type(s) of source work(s)	Works and/or related rights products (performances, phonograms, broadcasts)
Entity exercising broadcast/communication/recording	
Purpose of broadcast/communication/recording	Education and development of science
Condition of broadcast/communication/recording	
Frequency/limits of broadcast/communication/recording	
Preclusions (not part of broadcast/communication/ recording)	
Subject to Attribution	
Subject to Remuneration	Not required ("[neighbouring] rights ... does not apply")

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 460. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 18, 2024.

Compulsory Licences for Educational Reproductions and Translations

Provision	Arts. 84-86
Nature of compulsory licence for translation for educational purposes	Compulsory licence, for translation [and/or reproduction] in Indonesia
Facilities provided in Paris Act, Appendix	NA
Type(s) of source work(s)	
Purpose of licence	Purpose of education and/or science and research and development activities
Condition of license	Everyone to work in the fields of science and Literature Licence application may be made: for translation: 3 years from first creation (in the field of science and literature), Work has not been previously translated into Indonesian or reproduced in Indonesia

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 460 & 461. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 19, 2024.

Compulsory Licences for Educational Reproductions and Translations

	Minister may require owner to carry out own translation in Indonesia in the allotted time, or require owner to permit others to carry out the translation in Indonesia within the specified time if the owner does not implement its own, or appoint another party [licensee] to perform translation if owner fails to do so
Compulsory licence fee(s)	On reasonable terms
Price of publication	
Distribution conditions	Copies of translated work may not be exported
Grantor of compulsory licence	Minister

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 461. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 19, 2024.

Compulsory Licences for Educational Reproductions and Translations

Provision	Arts. 84-86
Nature of compulsory licence for translation for educational purposes	Compulsory licence, for translation [and/or reproduction] in Indonesia
Facilities provided in Paris Act, Appendix	NA
Type(s) of source work(s)	
Purpose of licence	Purpose of education and/or science and research and development activities
Condition of license	<p>Everyone to work in the fields of science and Literature Licence application may be made: for reproduction: 3 years from first publication (for books in the fields of mathematics and natural sciences, social sciences and art and literature)</p> <p>Work has not been previously reproduced in Indonesia</p>

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 460 & 461. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/scrr_33/scrr_33_6.pdf. Redrawn by Levri Ardiansyah, January 19, 2024.

Compulsory Licences for Educational Reproductions and Translations

	Minister may require owner to carry out own reproduction in Indonesia in the allotted time, or require owner to permit others to carry out the reproduction in Indonesia within the specified time if the owner does not implement its own, or appoint another party [licensee] to perform reproduction if owner fails to do so
Compulsory licence fee(s)	On reasonable terms
Price of publication	
Distribution conditions	Copies of reproduced work may not be exported
Grantor of compulsory licence	Minister

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 461 & 462. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/scrr_33/scrr_33_6.pdf. Redrawn by Levri Ardiansyah, January 19, 2024.

TPM/RMI Exceptions for Educational Purposes

Provision	Art. 52
Scope of TPM/RMI exception	Exception to permit damaging, destroying, removing or making it [non] functional control means used as protective technology for
Type(s) of source work(s)	Copyright works or product of related rights
Beneficiary exercising exception	
Purpose of exception	Other reasons appropriate with the provisions of the [Copyright] legislation, or agreed otherwise [with the rightholder]
Condition of exception	

Source: WIPO. (2016, November 9). Study on Copyright Limitations and Exceptions for Educational Activities. Prepared by Professor Daniel Seng. Geneva: WIPO Standing Committee on Copyright and Related Rights (SCCR/33/6). Page 462. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_33/sccr_33_6.pdf. Redrawn by Levri Ardiansyah, January 19, 2024.

1.5.2. Criteria of Specific Exceptions for the Benefit of Visually Impaired Persons in Indonesia

The screenshot shows the WIPO website interface. The browser address bar displays `wipo.int/meetings/en/doc_details.jsp?doc_id=75696`. The WIPO logo is at the top left, and the user's name 'Levri ARDIANSYAH' is at the top right. The main heading is 'Study on Copyright Limitations and Exceptions for the Visually Impaired'. Below this, a table provides document details:

Document Code	SCCR/15/7
Related Meeting(s)	SCCR/15
Publication Date	February 20, 2007
English	Study on Copyright Limitations and Exceptions for the Visually Impaired prepared by Judith Sullivan, Consultant, Copyright and Government Affairs

Specific Exceptions for the Benefit of Visually Impaired Persons in Indonesia		Legislation Reviewed Law of the Republic of Indonesia Number 19 of 2002 on Copyright Article 15d
Scope regarding end beneficiary	Blind people	
Works that may be used	Scientific, artistic and literary works	
Profit/non-profit making activity	Must not be for a commercial purpose	
Permitted/restricted acts covered	Reproduction	
Restrictions on who may undertake activity	No restrictions found	
Special formats or any accessible formats	Braille only	
Compulsory licence or exception	Exception	
Acknowledgement required	Source must be fully cited	
Other conditions	None found	
Overridable by contract	No provision found	
Interplay with DRMs	No provision found	

Source: WIPO. (2007, February 20). Study on Copyright Limitations and Exceptions for the Visually Impaired. Prepared by Judith Sullivan, Consultant on Copyright and Government Affairs. Geneva: WIPO SCCR 15/7. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/sccr_15/sccr_15_7.pdf. Redrawn by Levri Ardiansyah, January 30, 2024.

**Specific Exceptions for the Benefit
of Visually Impaired Persons in Indonesia**

Legislation Reviewed
Law of the Republic of Indonesia
Number 19 of 2002 on Copyright
Article 15d



Distribution to individuals	Not clear what distribution methods are possible. Distribution right in tangible copies does not seem to cover lending and only rental for some types of material (films, computer programs and sound recordings) so lending seems possible
Distribution to organisations	May be possible by some means, but subsequent distribution to visually impaired people not clear as distribution does not appear to be mentioned in exception
Export to individuals	No particular restriction found. Could be permitted, although doubt exists because of lack of permission to distribute in the exception and exception only permits Braille copies to be made in any case
Export to national organizations	No particular restriction found so could be possible by means not restricted by copyright given lack of provision for distribution in the exception
Export to international organisations	Same as for export to national organisations

Source: WIPO. (2007, February 20). Study on Copyright Limitations and Exceptions for the Visually Impaired. Prepared by Judith Sullivan, Consultant on Copyright and Government Affairs. Geneva: WIPO SCRR 15/7. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/scrr_15/scrr_15_7.pdf. Redrawn by Levri Ardiansyah, January 30, 2024.

**Specific Exceptions for the Benefit
of Visually Impaired Persons in Indonesia**

Legislation Reviewed
Law of the Republic of Indonesia
Number 19 of 2002 on Copyright
Article 15d



Import by individuals	Could be permitted as no provision preventing personal imports found
Import by organisations	Could be permitted for Braille copies as no specific restriction on imports found although could be a problem for subsequent distribution given lack of provision in the exception. Unlikely to be possible for other accessible copies although as for Braille copies it may not be the actual act of importation that is illegal
Export/import of intermediate copies	No provision found. Unlikely to be legal
Exhaustion of rights	Right to publish is broad and covers distribution of both tangible copies and dissemination over the internet. Not clear when right is exhausted, but rental right provided for films, computer programs and sound recordings seems not to be exhausted. See Articles 1, 2 and 49.

Source: WIPO. (2007, February 20). Study on Copyright Limitations and Exceptions for the Visually Impaired. Prepared by Judith Sullivan, Consultant on Copyright and Government Affairs. Geneva: WIPO SCRR 15/7. Retrieved from https://www.wipo.int/edocs/mdocs/copyright/en/scrr_15/scrr_15_7.pdf. Redrawn by Levri Ardiansyah, January 30, 2024.

1.6. Criminal Acts Defined in the Copyright Law of Indonesia

Criminal Acts Defined in the Copyright Law of Indonesia	
Rights management information and technological circumvention	<p>Article 112 contains two unlawful acts in relation to rights management information and technological circumvention measures for commercial use:</p> <p>Unlawfully removing, changing or damaging copyright management information and copyright electronic information (defined under Article 7(3)) that are owned by the Author and/or</p> <p>Damaging, destroying, eliminating, or disabling the function of technological protection measures (defined in Article 52) used as a safeguard for the works or related rights products.</p>
Landlord liability sale of copyright infringing goods on landlord premises	<p>Article 114 provides a criminal offence for those managing business premises where the owner deliberately and knowingly allows the sale and/or duplication of goods resulting into infringement of copyright and/or related rights in the premises that they manage (as set out in Article 10).</p>
Collective Management Organization (CMO) offences	<p>Under Article 119 any unlicensed CMO [(defined in Article 88 (3))] seeking to collect royalties commits an offence.</p>

Source: Britcham Indonesia. (2020, April 30). Intellectual Property Rights Enforcement Manual for Indonesia. Retrieved from https://rouse.com/media/1zzimehq/fsip_ip-enforcement-manual_britcham-indonesia_05-08-2020_printed-version.pdf.

Criminal Acts Defined in the Copyright Law of Indonesia	
Economic rights infringement	<p>The Copyright Law sets out different criminal offences for each of the different economic rights.</p> <p>Article 113 (1) sets out one criminal offence in relation to the economic rights of the author or the copyright holder: the right to rental</p> <p>Article 113 (2) sets out 4 criminal offences in relation to the economic rights of the author or the copyright holder: translation; adaptation, arrangement, or transformation; performance; and communication</p> <p>Article 113 (3) sets out 4 criminal offences in relation to the Economic Rights of the Author or the Copyright holder: publication; reproduction; distribution and publication</p> <p>Article 113 (4) sets out an aggravated infringement offence of intentional piracy.</p>
Infringement of publicity/ advertising rights	<p>Article 115 provides that where persons are portrayed in publicity/advertising images (as set out in Article 12), the commercial use, reproduction, publication, distribution or communication of their image rights for the purposes of advertising or publication in electronics and non-electronic media is an offence.</p>

Source: Britcham Indonesia. (2020, April 30). Intellectual Property Rights Enforcement Manual for Indonesia. Retrieved from https://rouse.com/media/1zzimehq/fsip_ip-enforcement-manual_britcham-indonesia_05-08-2020_printed-version.pdf.

Criminal Acts Defined in the Copyright Law of Indonesia



Infringement of performers rights	<p>Article 116 sets out criminal offences in relation to the economic rights of performers for commercial use:</p> <p>Article 116 (1) prohibits unauthorised rental to the public of fixations of performances [(defined in Article 23(2)(e)).</p> <p>Article 116 (2) prohibits unauthorised broadcasting or communication of performances, fixation of unfixed performances, or making available of the fixation of performances to the public [defined in Article 23(2) (a) (b) and (f)].</p> <p>Article 116 (3) prohibits unauthorised reproduction or fixation of performances [defined in Article 23(2) (c) and (d)].</p> <p>Article 116(4) provides an aggravated infringement offence of intentional piracy.</p>

Source: Britcham Indonesia. (2020, April 30). Intellectual Property Rights Enforcement Manual for Indonesia. Retrieved from https://rouse.com/media/1zzimehq/fsip_ip-enforcement-manual_britcham-indonesia_05-08-2020_printed-version.pdf.

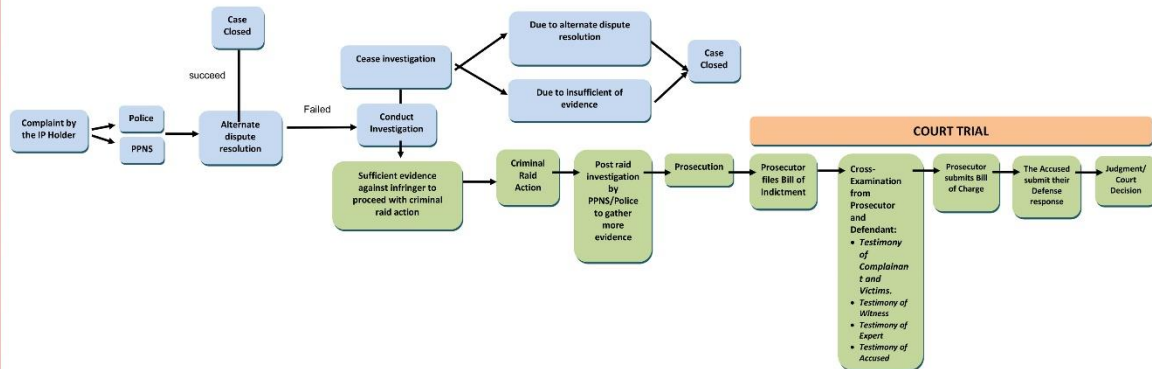
Criminal Acts Defined in the Copyright Law of Indonesia



Infringement of phonogram/sound recording rights of producers	<p>Article 117 sets out criminal offences in relation to the economic rights of producers of phonogram/sound recordings for commercial use.</p> <p>Article 117 (1) prohibits unauthorised rental of phonograms [defined in Article 24(2)(c)]</p> <p>Article 117 (2) prohibits unauthorised reproduction, distribution and making available by wire or wireless to the public [defined in Article 24(2) (a) (b) and (d)]</p> <p>Article 117(3) provides an aggravated infringement offence of intentional piracy.</p>
Infringement of broadcast rights	<p>Article 118 sets out criminal offences in relation to the economic rights of broadcasters.</p> <p>Article 118 (1) prohibits unauthorised rebroadcasting, communication, fixation or reproduction of a broadcast [defined in Article 25(2) (a) (b) (c) and (d)].</p> <p>Article 118 (2) provides an aggravated infringement offence of intentional piracy.</p>

Source: Britcham Indonesia. (2020, April 30). Intellectual Property Rights Enforcement Manual for Indonesia. Retrieved from https://rouse.com/media/1zzimehq/fsip_ip-enforcement-manual_britcham-indonesia_05-08-2020_printed-version.pdf.

Flowchart for Criminal Procedure for Copyright in Indonesia



Source: Britcham Indonesia. (2020, April 30). Intellectual Property Rights Enforcement Manual for Indonesia. Retrieved from https://rouse.com/media/1zimehq/fsip_ip-enforcement-manual_britcham-indonesia_05-08-2020_printed-version.pdf.

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Levri Ardiansyah

Patentable and Non-Patentable Subject Matter in the United States, Indonesia and India

Week 2 Assignment on IPR Conceptual
(Internal-1 for GPIPL)



The WIPO-NLUD Joint Masters/LL.M in Intellectual Property Law and Management, offered by the World Intellectual Property Organization (WIPO), National Law University Delhi (NLUD) and Controller General of Patents, Designs and Trademarks of India (CGPDTM).

August 26 to 31, 2024

Topic 2

Patentable and Non-Patentable Subject Matter in the United States, Indonesia and India

2.1. What is a Patent?



Patent and Patentable Subject Matter



In Indonesia, patent means an exclusive right granted to the inventors by the State as the result of his/her invention in the field of technology for a definite period of time to exclusively implement his/her given invention or to give consent to other party.

See the Law of the Republic of Indonesia Number 13 of 2016 on Patent, Chapter I, General Provisions, Article 1.

In India, under the Patents Act, 1970, patent means a patent for any invention granted under this Act.

See the Patents Act, 1970, Section 2, Definitions and Interpretation, (1) (m)).

In U.S., a patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office.

What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention.

See the USPTO, 2014.

In Indonesia, patent means an exclusive right granted to the inventors by the State as the result of his/her invention in the field of technology for a definite period of time to exclusively implement his/her given invention or to give consent to other party¹.

In India, under the Patents Act, 1970, patent means a patent for any invention granted under this Act².

In U.S., a patent for an invention is the grant of a property right to the inventor, issued by the United States Patent and Trademark Office. What is granted is not the right to make, use, offer for sale, sell or import, but the right to exclude others from making, using, offering for sale, selling or importing the invention³.
(3.).

ENDNOTES

2. See the Law of the Republic of Indonesia Number 13 of 2016 on Patent, Chapter I, General Provisions, Article 1. Source: World Intellectual Property Organization. (n.d.). Indonesia ID067. Law No. 13 of 2016 on Patents. Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/16392>.
3. See the Patents Act, 1970, Chapter 1, Section 2, Definitions and Interpretation, (1) (m). Source: Intellectual Property India. (2015). The Patents Act, 1970. Retrieved from https://ipindia.gov.in/writereaddata/Portal/IPOAct/1_31_1_patent-act-1970-11march2015.pdf.
4. See the USPTO, 2014. Source: United States Patent and Trademark Office.(2014). General Information Concerning Patents. The USPTO, Department of Commerce. Retrieved from <https://www.uspto.gov/sites/default/files/inventors/edu-inf/BasicPatentGuide.pdf>

2.2. Patentable Subject Matter in the United States

A U.S. patent gives the inventors four conditions for their invention to be patented.

- (1) Able to be used (the invention must work and cannot just be a theory);
- (2) A clear description of how to make and use the invention;
- (3) New, or “novel” (something not done before);
- (4) “Not obvious,” as related to a change to something already invented

2.3. Newness and Disclosure

2.3.1. Newness and Disclosure in the United States

In the United States, for application filed on or after March 16, 2013 (after AIA):

Disclosure made one year or less before the effective filing date of a claimed invention shall not be prior art to the claimed invention for the determination of novelty and inventive step if:

1. The disclosure was made by the inventor or joint inventor or by another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor;
2. The subject matter disclosed had, before such disclosure, been publicly disclosed by the inventor or a joint inventor or another who obtained the subject matter disclosed directly or indirectly from the inventor or a joint inventor;

For applications filed before March 16, 2013 (before Leahy-Smith America Invents Act (AIA):

Disclosure not to be taken into consideration in determining novelty and inventive step if it occurred within one year before the filing date in the form of:

1. Inventions patented or described in a printed publication in the U.S. or abroad;
2. Public use or on sale in the U.S.

2.3.2. Newness and Disclosure in India

An invention shall not be deemed to have been anticipated by:

1. Disclosures at any time before the filing date (priority date) of matter obtained from, and published without the consent of, the inventor or his successor in title (provided that the invention was filed in India or a convention country as soon as reasonably practicable thereafter);
2. Other applications made in contravention of the rights of the inventors or his successor in title or public use or publication of the invention without consent of the inventor or his successor in title by the applicants of such other applications or by any other person in consequence of the disclosure;
3. Disclosures due to communication of the invention to the Government or to any person authorized by the Government to investigate the invention or its merits, or for the purpose of that investigation;
4. Disclosures within 12 months before the application is made (calculated from the opening of the exhibition or the reading or publication of the paper) by:
 - a) display or use of the invention with the consent of the inventor or his predecessor in title at an industrial or other exhibition notified in the Official Gazette;
 - b) publication of the invention in consequence of such display or use;
 - c) use of the invention during the period of the exhibition without the consent of the inventor or his predecessor in title;

- d) description of the invention in a paper read by the inventor before a learned society or published with his consent in the transactions of such a society.
- 5. Disclosures within one year before the filing date (priority date) by public working the invention for reasonable trial, or by with the consent of the applicant or his predecessor in title.
- 6. Publication of invention anywhere in the world or use of the invention in India at any time after the filing of the provisional specification or complete specification which is treated as provisional specification by virtue of a direction under subsection (3) of section 9 of the Act.

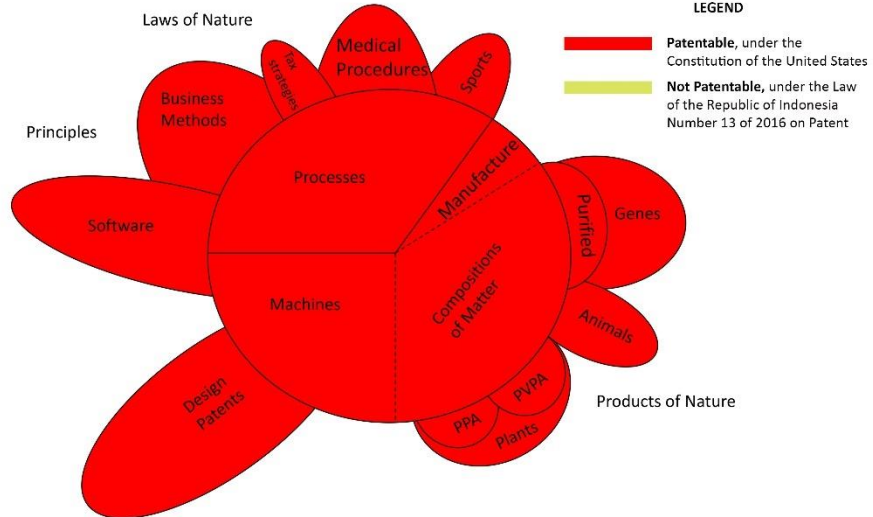
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2.4. The Scope of Patentable Subject Matter in USA



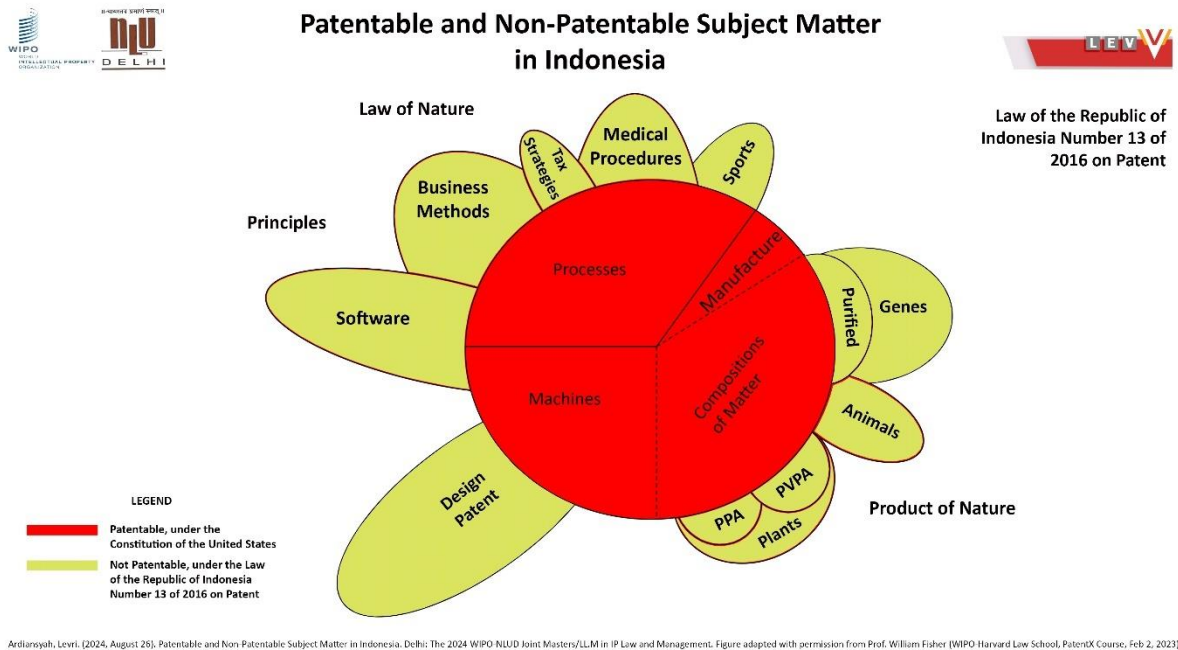
The Scope of Patentable Subject Matter by Prof. William Fisher (Harvard Law School)



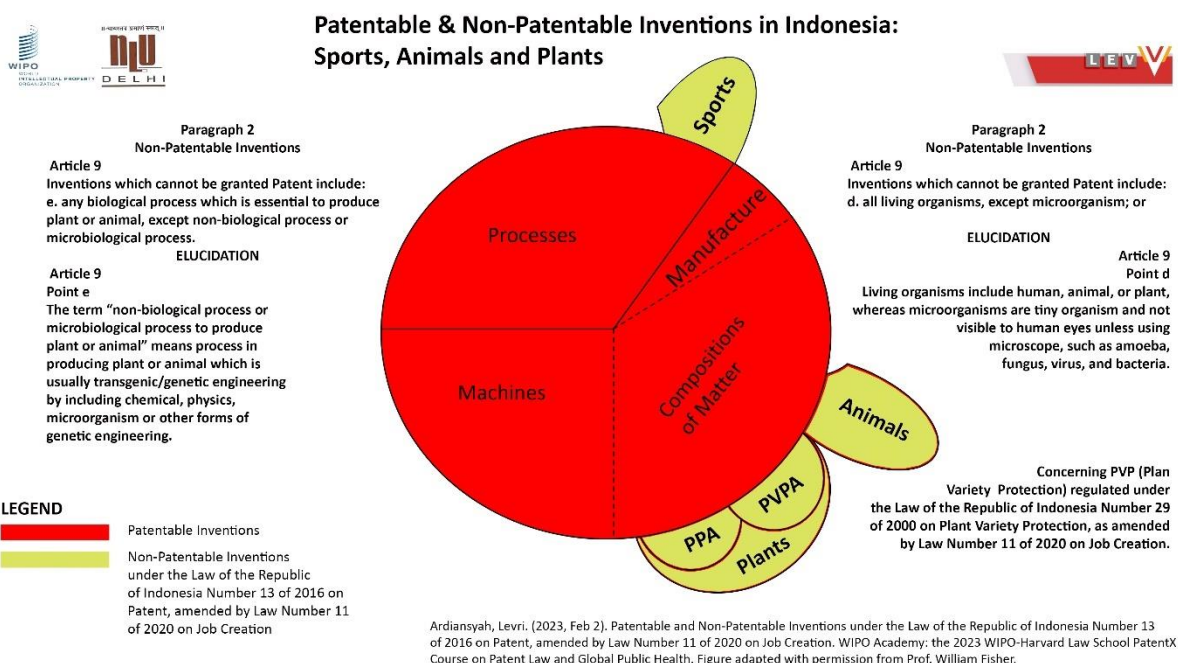
Fisher, William. (2023, February 2). Fisher_Module_102_Exercise on the Scope of Patentable Subject Matter. The First Edition of the Harvard/WIPO PatentX Course on Patent Law and Global Public Health, offered jointly by the WIPO in Geneva, Switzerland and the Harvard Law School in Cambridge, United States of America.

Source: Fisher, William. (2023, Feb to May). Fisher_Module_102_Exercise. The Scope of Patentable Subject Matter. Harvard Law School, presented for the First Edition Harvard/WIPO PatentX Course on Patent Law and Global Public Health .

2.5. Patentable and Non-Patentable Subject Matter in Indonesia under the Law of the Republic of Indonesia Number 13 of 2016 on Patent



2.5.1. Non-Patentable Inventions in Indonesia: Sports, Animals and Plants



Inventions which cannot be granted patent include: e. any biological process which is essential to produce plant or animal, except non-biological process or microbiological process.⁴

The term “non-biological process or microbiological process to produce plant or animal” means process in producing plant or animal which is usually transgenic/genetic engineering by including chemical, physics, microorganism or other forms of genetic engineering.⁵

Inventions which cannot be granted Patent include: d. all living organisms, except microorganism;⁶ or ...

Living organisms include human, animal, or plant, whereas microorganisms are tiny organism and not visible to human eyes unless using microscope, such as amoeba, fungus, virus, and bacteria.⁷

In botany and horticulture, the term ‘sport’ is an odd branch or bloom that differs in color, form, structure or shape from the parent plant. The sport can usually be traced back to its origin.

Pertaining to a PVP (Plant Variety Protection), regulated under the Law of the Republic of Indonesia Number 29 of 2000 on Plant Variety Protection, as amended by Law Number 11 of 2020 on Job Creation.⁸

In Indonesia, Plant Variety Protection (PVP) is not provided through the Patent Law for the following reasons:

Patent holders will have the authority in principle to prohibit the reuse of seeds planted by farmers, with the consequence that there will be high costs for farmers, and the dominance of giant seed companies will be stronger.

Breeding based on the protection of plant varieties will be eliminated when patent protection does not support the types of inventions produced by traditional farmers that are not patented and used freely among the group of farmers.

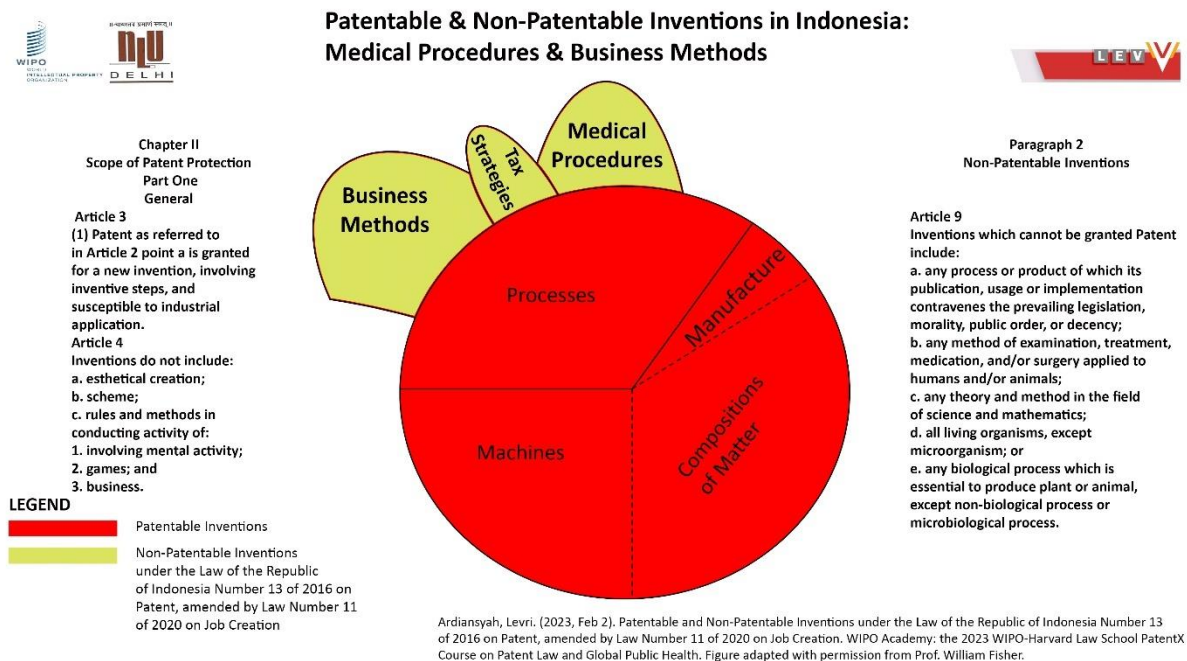
The granting of patents is characterized by monopoly rights on seeds and plants that are the object of significant seed production and trade.

Patenting promotes higher standardization and reinforces the trend towards monocultivation, which will erode biodiversity.

ENDNOTES

5. See Paragraph 2 Non-Patentable Inventions, Article 9 of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.
6. See the Elucidation, Article 9, Point e of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.
7. See Paragraph 2 Non-Patentable Inventions, Article 9 (d) of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.
8. See the Elucidation, Article 9, Point d of the Law of the Republic of Indonesia Number 13 of 2016 on Patents.
9. See the World Intellectual Property Organization. (n.d.). WIPO Lex No. IN049. Law No. 29 of 2000 Regarding Plant Variety Protection, Indonesia. Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/6171>.

2.5.2. Non-Patentable Inventions in Indonesia: Business Methods, Tax Strategies and Medical Procedures



Patent as referred to in Article 2 point a is granted for a new invention, involving inventive steps, and susceptible to industrial application.⁹

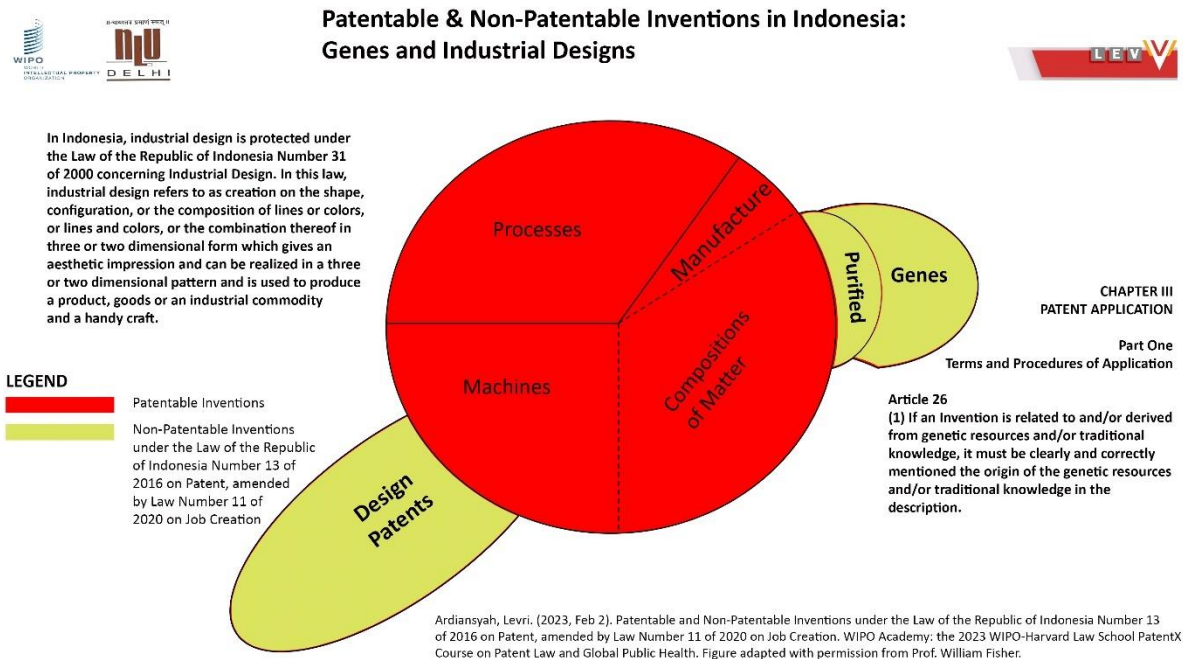
Inventions do not include: a. esthetical creation; b. scheme; c. rules and methods in conducting activity of: 1. involving mental activity; 2. games; and 3. business.¹⁰

Inventions which cannot be granted Patent include: a. any process or product of which its publication, usage or implementation contravenes the prevailing legislation, morality, public order, or decency; b. any method of examination, treatment, medication, and/or surgery applied to humans and/or animals; c. any theory and method in the field of science and mathematics; d. all living organisms, except microorganism; or; e. any biological process which is essential to produce plant or animal, except non-biological process or microbiological process.¹¹

ENDNOTES

10. See Chapter II, Scope of Patent Protection, Part One, General, Article 3 (1) of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.
11. See Chapter II, Scope of Patent Protection, Part One, General, Article 4 of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.
12. See Paragraph 2, Non-Patentable Inventions, Article 9 of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.

2.5.3. Non-Patentable Inventions in Indonesia: Genes and Design Patents



In Indonesia, industrial design is protected under the Law of the Republic of Indonesia Number 31 of 2000 concerning Industrial Design. In this law, industrial design refers to as creation on the shape, configuration, or the composition of lines or colors, or lines and colors, or the combination thereof in three or two dimensional form which gives an aesthetic impression and can be realized in a three or two dimensional pattern and is used to produce a product, goods or an industrial commodity and a handy craft.

If an Invention is related to and/or derived from genetic resources and/or traditional knowledge, it must be clearly and correctly mentioned the origin of the genetic resources and/or traditional knowledge in the description.¹²

ENDNOTES

- See Chapter III, Patent Application, Part One, Terms and Procedures of Application, Article 26 (1) of the Law of the Republic of Indonesia Number 13 of 2016 on Patent.

2.5.4. Subject Matter for Protection under Patent and Copyright Law: Indonesia's Current Protection Mechanisms

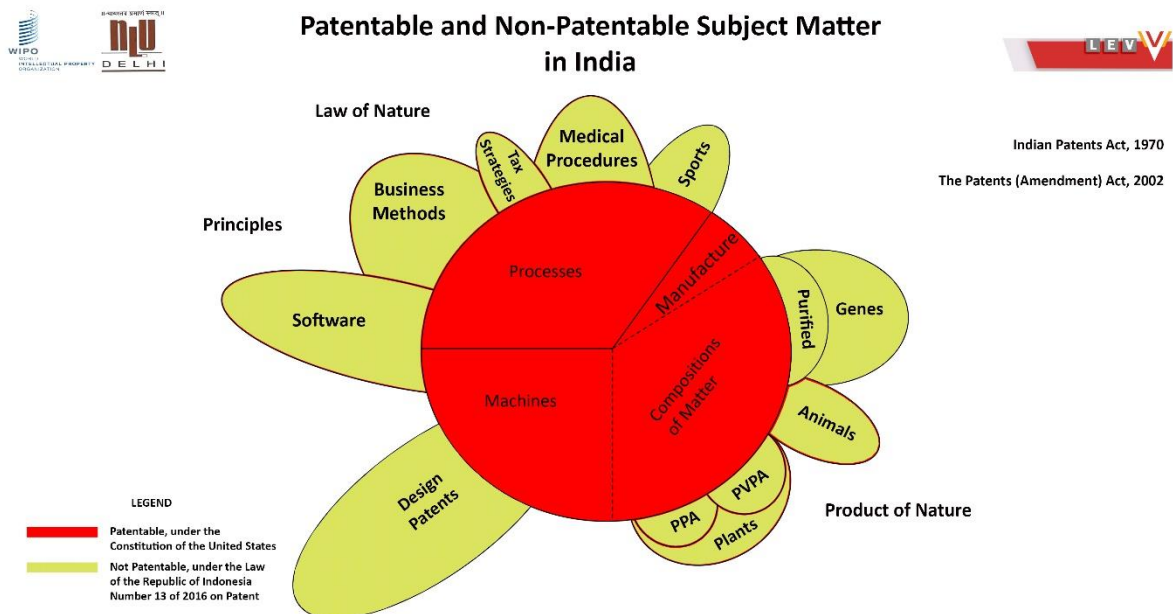


Indonesia's Current Protection Mechanisms: Subject Matter for Protection under Patent and Copyright Law



Country	Law	Subject Matter for Protection	Beneficiaries	Scope of Protection	Consequences of Non-Compliance
Law for the Protection of Traditional Knowledge (TK)					
Indonesia	Law No. 5 of 2017 concerning the Advancement of Culture	TK & TCE	State	White Papers, Strategy, Master plans (Policy)	Administrative sanctions
	Patent Act No. 13 of 2016	TK & GRs	n/a	Disclosure of origin	n/s
Law for the Protection of Traditional Cultural Expression (TCE)					
Indonesia	Law No. 28 of 2014 on Copyrights	Folklores	The State	Non-citizens must seek permission from the state to use	n/a
	Law No. 5 of 2017 concerning the Advancement of Culture	TK, rites, traditional technology, arts and languages are all considered Objects of Advancement of Culture	Stakeholders in TCE	Under the law, the Central Government and/or Regional Government is obligated to record and document Objects of Advancement of Culture. The governments further have obligation to safeguard Objects of Advancement of Culture.	
Law for the Protection of Genetic Resources (GRs)					
Indonesia	Law No.22 of 2019 on Sustainable Agriculture Cultivation Systems	GRs	State	Permit required to search and collect GRs, except for small farmers.	
	Patent Act No. 13 of 2016	TK and GRs	n/a	Disclosure of origin	n/s
	Law Number 32 of 2009 concerning Environmental Protection and Management	TK and GRs	Traditional Communities	Government authorizes to stipulate policies on procedures for recognizing traditional communities, local wisdom, and the rights of traditional communities with respect to environmental protection and management.	

2.6. Non-Patentable Subject Matter in India under the Indian Patents Act, 1970 and the Patents (Amendment) Act, 2002



Ardiansyah, Levri. (2024, August 26). Patentable and Non-Patentable Subject Matter in India. Delhi: The 2024 WIPO-NUJUD Joint Masters/LLM in IP Law and Management. Figure adapted with permission from Prof. William Fisher (WIPO-Harvard Law School, PatentX Course, Feb 2, 2023).

Design Patent

The registration and protection of industrial designs in India is administered by the Designs Act, 2000 and corresponding Designs Rules, 2001 which came into force on 11th May 2001 repealing the earlier Act of 1911. The Design Rules, 2001 was further amended by Designs (Amendment) Rules 2008 and Designs (Amendment) Rules 2014. The last amendment in Designs Rules came in to force from 30th Dec, 2014, which incorporates a new category of applicant as small entity in addition to natural person and other than small entity.¹³

Genes

Section 3(c) of the Indian Patents Act (1970) prohibits patenting a discovery of a living or non-living thing found in nature, and DNA patenting remains a matter of conjecture. In 2005, the Draft Manual of Patent Practice and Procedure was released with an annexure specifically dedicated to biotechnical and pharmaceutical inventions. This allowed for recombinant DNA and plasmids to be patented as long as they meet the criterion of “novelty owing to substantial human intervention”. However, for undisclosed reasons, this annexure was missing from the 2008 Draft Manual of Patent Practice and Procedure.

In 2011, Intellectual Property India's (IPIndia) Manual of Patent Practice and Procedure, dated March 2011, states in its guidelines on the 'unity of invention' that independent claims of different categories may relate to a single inventive concept. With regard to genetically modified gene/amino acid sequences, claims can cover: a gene/amino acid sequence; a method of expressing the sequence; an antibody for the sequence; and a kit containing the antibody.¹⁴

ENDNOTES

14. See <https://ipindia.gov.in/designs.htm>.

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